

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EVELYN M. McELFRESH, ADMINISTRATRIX  
CUM TESTAMENTO ANNEXO, ESTATE OF  
WALTER A. McELFRESH, DECEASED

Claim No. CU-3713

Decision No. CU 5920

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$6,146,666.67, was presented by the aforesaid claimant in her representative capacity based upon the asserted ownership and loss of extensive mining rights said to have been owned by the late Walter A. McElfresh who died in 1962. Claimant asserts that her predecessor in interest and his heirs have been nationals of the United States at all times pertinent to this claim.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and

debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1969).)

Claimant has asserted that her late husband, Walter A. McElfresh, who died in 1962, owned certain stock interests in Cuban mining corporations, including 10 shares or a one-third interest in the Tarbell Mining Company of Cuba, and 200 shares of the Consolidated Gold Mines of Cuba. Claimant has submitted a provisional certificate of the Tarbell Mining Company for 10 shares issued in 1957 to Ross L. Clark, transferred by the registered owner to the decedent herein on November 25, 1957; and has also submitted Certificates Nos. 26 and 44, issued to "bearer", each for 100 shares, of the Consolidated Gold Mines of Cuba.

The claimant, through the former partner and business associate of the decedent, Richard B. Wiggins, has submitted various mining reports prepared by geologists concerning minerals in the Holguin area of Oriente Province, extensive correspondence dating back to 1931 concerning mines in the Oriente District, correspondence between the late Ross L. Clark and Sergio de Biscuccia to the decedent, assay reports prepared by the Government of Cuba and others, a 1940 report of the Royal Bank of Canada concerning shipments of ore by the Corporacion Minera de Oro, reports concerning other mining ventures in Holguin as well as other areas in Central and South America.

Claimant has submitted correspondence and a quit-claim Deed executed in 1957 by the Executrix of the Estate of Ralph E. Kurtz, whereby the late Ross L. Clark acquired certain mining claims known as Hatuey, Coabilla and Atlanta, located in San Jose de la Plata, Victoria de las Tunas, Oriente, Cuba, comprising an area of approximately 1,228 acres.

By Commission letter of July 6, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the provisions of the Act. Thereafter, the Commission made additional suggestions to claimant in letters of May 13, 1968 and July 10, 1968, with respect to the submission of evidence pertaining to ownership, loss and value of the property, subject of this claim.

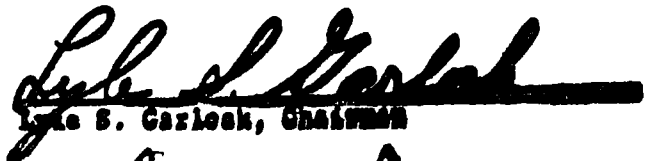
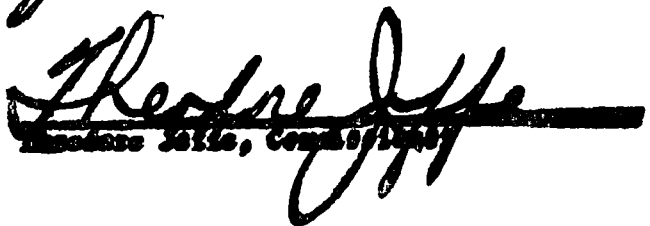
The Commission suggested that claimant submit appropriate evidence pertaining to the mining activities of the subject Cuban corporations immediately prior to the asserted nationalization or other taking of the property by the Government of Cuba, including evidence pertaining to the extent and type of ore taken from the mining concessions, shipment of ore, profits or losses, if any, or any information bearing on the mining operations of the Cuban enterprises. The Commission also suggested that claimant advise the Commission as to leasing arrangements of the concessions, if any, and what measures were taken to exploit ore from the concessions in question. Further, the claimant was requested to submit annual reports, balance sheets or any financial data to establish the value of such stock interests, as well as information with respect to the date of nationalization or other taking by the Government of Cuba.

While the claimant has submitted correspondence, appraisals, reports, maps and other data with respect to the possibilities of developing mines in Cuba and elsewhere, there has been no evidence of probative value, as suggested by the Commission and as outlined above, to specifically determine ownership rights in mining concessions, value of such ownership rights at the time of loss or the taking thereof by the Government of Cuba.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is constrained to find that claimant herein has not met the burden of proof in that she has failed to establish the ownership and value of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, the Commission is also constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**OCT 21 1970**

  
Lyle S. Garlock, Chairman  
  
Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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